

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

TUESDAY, THE NINETH DAY OF FEBRUARY TWO
THOUSAND AND SIXTEEN

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Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.40710 of 2015

Between:

G.R. Reddy, S/o. Raji Reddy,
Aged 52 years, Occ: Driver,
Managing Director's Peshi,
E.No.303193, Bus Bhavan,
Musheerabad, Hyderabad.

.. Petitioner

AND

Telangana State Road Transport Corporation,
Rep. by its Joint Managing Director,
Bus Bhavan, Musheerabad,
Hyderabad & 4 others

.. Respondents

The Court made the following:

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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.40710 of 2015

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ORDER:
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The petitioner joined service as driver on 23.03.1988 on temporary basis and his service was regularized on 17.07.1988. The petitioner is aggrieved by the notice, dated 01.09.2015, informing the petitioner that he is due for retirement from service on attaining the age of superannuation on 29.02.2016.

2. At the time of joining service, the petitioner did not produce any certificate as proof of date of birth. However, according to the petitioner, he has submitted a Medical Certificate obtained from the hospital showing the date of birth of the petitioner as 16.06.1963. Before admitting the petitioner to service, the petitioner was subjected to medical examination and the Medical Officer, in his certificate, dated 19.02.1988, declared the petitioner as 30 years aged and, therefore, the date of birth of the petitioner was assessed as 19.02.1958. By referring to the Medical Certificate given by the Medical Officer, the petitioner's date of birth is now shown as 19.02.1958 and, accordingly, the impugned notice of retirement is issued.

3. Learned counsel for the petitioner contends that at the time of joining service, the petitioner has produced the Medical Certificate showing his date of birth as 16.06.1963. The

same was accepted and, accordingly, in the service record, the date of birth of the petitioner is shown as 16.06.1963. In the Provident Fund records also, the date of birth of the petitioner is reflected as 16.06.1963. In the family member declaration given by the petitioner also, he has declared his date of birth as 16.06.1963. All alone, the date of birth of the petitioner is shown as 16.06.1963 and the petitioner was not aware of the date of birth recorded by the respondents as 19.02.1958 until the impugned notice is served on him. Learned counsel for the petitioner submits that such action of the respondents is illegal. They could not have changed the date of birth of the petitioner in the service record without notice and opportunity to the petitioner. Learned counsel for the petitioner further submits that as held by this Court in the case of **R. Sudhakar Vs. APSRTC, Musheerabad, Hyd.**^[1], Medical Certificate cannot be the basis for determination of age. The Medical Certificate is only for the purpose of determination of fitness of the person selected for a post and, therefore, the respondent Corporation could not have changed the date of birth of the petitioner in the service record by referring to the Medical Certificate.

4. Learned Standing Counsel for the respondent Corporation submits that at the time of entering into service, the petitioner was examined by the Medical Officer. As per the statement given by the petitioner, the Medical Officer recorded the age of the petitioner as 30 years on the date of examination and, therefore, the respondent Corporation recorded the date of birth of the petitioner as 19.02.1958. Thus, when the service records were verified, when they noticed a wrong entry of date of birth and that the petitioner's date of birth has to be 19.02.1958, in view of the Medical Certificate given to the petitioner at the time

of entry into the service, appropriate corrections are made and the notice is validly issued. Learned Standing Counsel further submits that there is variation in the date of birth in some other records also. He placed reliance on the form of declaration under the guaranteed provident fund wherein the date of birth is shown as 16.06.1964 and contends that the petitioner do not have a consistent entry of date of birth in the absence of proper proof. The date of birth as assessed by the Medical Officer has to be taken as the basis for determination of the date of birth.

5. Learned Standing Counsel further submits that at the time of joining service, the petitioner has not produced any proof of age. The petitioner produced Transfer Certificate of pass of VI Class wherein the date of birth is shown as 16.06.1963. The respondent Corporation has not accepted the representation submitted by the petitioner belatedly disclosing his date of birth as 16.06.1963 by relying upon the said Transfer Certificate in view of the Regulation No.19 of the A.P.S.R.T.C. Employees (Service) Regulations, 1964. According to the learned Standing Counsel, once the date of birth is entered in the service record, no claim for alteration can be entertained and, therefore, the request of the petitioner made belatedly was not accepted.

6. The only issue for consideration in this writ petition is whether the date of birth was altered in the service record of the petitioner without following the due process.

7. The original service record of the petitioner is produced. As seen from the first page of the service record of the petitioner, it was written as 19.02.1958 against Column No.6 - date of birth. This was rounded off and above that 16.06.1963 is written. Later, this is cut off and 19.02.1958 is written again. On

the right side of the document, it is written that the date of birth is verified as per MC – 19.02.1958.

8. Learned counsel for the petitioner contended that accepting the claim of the petitioner, the entry of date of birth is written as 16.06.1963 and no further opportunity is given to the petitioner before altering the said date of birth entry and putting the date of birth as 19.02.1958. The said contention is not denied by the respondent Corporation. The entries made in office order, dated 10.11.2014, would show that the petitioner has declared the date of birth as 16.06.1963 and the same was entered in the service record as 16.06.1963, but later the date of birth is corrected as 19.02.1958 based on the Medical Certificate.

9. Learned counsel for the petitioner contended that the proceedings are now served on the petitioner and the petitioner was not informed of such alteration. The said contention of the petitioner is not denied. Thus, admittedly, the date of birth is altered in the service record of the petitioner without putting on notice the petitioner about the alteration of the date of birth. The reply was given to the petitioner refusing to correct the date of birth in proceedings, dated 27.10.2015, which is in response to the representation submitted by the petitioner on 08.10.2015 after service of retirement notice, dated 01.09.2015.

10. It is settled principle of law that the date of birth once entered in the service record cannot be altered without notice and opportunity of hearing. The entry of date of birth in service record is crucial for regulation of all service conditions of an employee including his date of retirement. When an employer seeks to alter the date of birth entered in the service record, it is but necessary that the employee should be put on notice and be given due

opportunity before undertaking such correction. Admittedly, no such procedure is followed. Further more, the basis for such alteration is the Medical Certificate issued.

11. As seen from the Medical Certificate, it appears the assessment was only for the purpose of suitability of the person for employment. The Medical Certificate was issued by a Civil Surgeon. No Civil Surgeon can assess the date of birth and age of the person. The age of the person has to be assessed by a scientific assessment by doctors having specialization such as E.N.T., Orthopedic, but not by a Civil Surgeon. Thus, no scientific assessment of age was made at the time of entry into service and, therefore, the employer could not have fallen back on such certificate to *suo moto* alter the date of birth of the petitioner. Thus, the impugned order is liable to be set aside on that ground alone and it is, accordingly, set aside.

12. It is seen that the petitioner earlier placed reliance on a Medical Certificate issued in his favour at the time of joining service. The certificate relied upon by the petitioner is also by a General Surgeon. There is no other material available with the petitioner when he joined in service. The petitioner is now placing reliance on Transfer Certificate issued by the school authority showing his date of birth as 16.06.1963. As seen from the application submitted by the petitioner at the time of joining service, the petitioner has only declared as can read and write. He did not disclose his educational qualification at that stage. It is not stated as to why the petitioner has disclosed his educational qualification and why he did not produce the school leaving certificate at that time. Thus, no credence can be given to a subsequent document brought on record.

13. The learned counsel for the petitioner sought to rely on the decision of this Court in **R. Sudhakar's Case** (1 *supra*) to contend that the Medical Certificate cannot be the basis for determination of age. The facts in that case are not similar to the facts in this case. In the said case, the petitioner produced the School Leaving Certificate as the basis for determination of age, but his date of birth was determined based on the Medical Certificate. The contention of the petitioner that he had produced School Leaving Certificate is not based on record and apparently the entry of date of birth was initially made based on the Medical Certificate. As seen from the present case and as noticed above, both sides relied upon respective Medical Certificates which were issued by General Civil Surgeon. In the case relied upon by the learned counsel for the petitioner, the Court did not declare that in no circumstances, an employee cannot be examined medically for determination of age and that Medical Certificate cannot be accepted. The Court only observed that Medical Certificate is only relied upon as to the fitness of the candidate to be appointed in a particular post.

14. In the absence of an authentic proof of age, it is permissible to subject an employee for medical examination by a competent Medical Board to scientifically assess the age of the person. Thus, the respondent Corporation is granted liberty to subject the petitioner for medical examination to determine the age of the petitioner and to take consequential steps.

15. With the above observations, the Writ Petition is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

P.NAVEEN RAO, J

Date: 9th February, 2016

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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